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In The

Supreme Court of the United States

October Term, 1955

No. ———

George H. Brasier, PETITIONER,

V.

United States of America; H. V. Higley, Administrator of Veteran Affairs, Veterans Administration, Washington, D.C., Ted Martens Chief of Vocational Rehabilitation, Lincoln, Nebraska; Freeman B. Decker, Superintendent of Public Instruction, Lincoln, Nebraska, Wayne O. Reed, former Superintendent of Public Instruction, Lincoln, Nebraska and Otto G. Ruff, former Supervisor of Veterans Education, Lincoln, Nebraska, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States.

George H. Brasier, the petitioner herein, prays that a writ of Certiorari be issued to review final judgment of the United States Court of Appeals for the Eighth Circuit entered in this cause on June 21, 1955, reported at — F. 2d — and appended herein. (App. A)

JURISDICTION.

The judgment of the Court of Appeals was entered on June 21, 1955, a petition for rehearing was duly filed, overruled and mandate issued on August 8, 1955. The jurisdiction of this Court is invoked under 28 U.S.C.A. 1254.

QUESTIONS PRESENTED.

1. Did the Plaintiff's contract with the Agents of the State of Nebraska constitute a franchise and a vested property right?

2. Did Plaintiff's contract with the Veterans Administration having been accepted and acted upon constitute a vested property right?

3. Can the holder of such rights be divested of his property therein without compensation or any legal process or proceedings?

4. Can the Congress within the limitations of the Constitution enact legislation authorizing administrative agencies to act in the place of regularly constituted Courts and depriving said Courts of jurisdiction and without formal or other proceedings finally determine the facts and law upon which property rights depend and within their sole discretion terminate said rights?

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED.

The Constitutional provisions involved herein are: Article I, Section 10, the Fifth and Section 1 of the Fourteenth Amendments; the Statutes are Sections

11a-2 and 705 of Title 38 U.S.C.A.; the Regulation is Instruction No. 1, pursuant to the Independent Offices Appropriation Act, 1950, Public Law 266, 81st Congress, 63 Stat. 631, 653. (App. B)

STATEMENT.

Petitioner was the owner and operator of the Lincoln Barber College, located in the City of Lincoln, Nebraska (R. 55,56), doing business principally with the Veterans Administration under a negotiated contract (R. 6-14), formally approved and accepted on September 6, 1949, pursuant to Public Laws 16 and 346, 78 Congress, as amended and to a negotiated franchise (R.14,15) granted by the Superintendent of Public Instruction, State of Nebraska on the 15th day of November, 1948, both stemming from the coordinated efforts of the Veterans Administration and the State Accrediting Agency.

That on the 12th day of September, 1949, the Superintendent of Public Instruction by summary action notified Petitioner his franchise had been withdrawn. And on the 13 day of September, 1949, the Veterans Administration by summary action notified Petitioner his contract had been terminated as of August 24, 1949, and that the action had been coordinated with the State Agency, that students enrolled prior to said date could be retained (R. 57,58).

The contention of the herein Petitioner was that the concerted and coordinated acts of the here concerned Defendants, violated Petitioner's substantive property rights guaranteed by the Federal Constitution; that vested rights had accrued in the Petitioner as to his

franchise and contract and could not be impaired, altered, abolished or taken without due process of law, or just compensation, or as provided by the terms of franchise and contract; that the concerted and coordinated acts of concerned Defendants and the fact that the Federal Goverment had a monopoly of the young men of that period, by reason of Public Laws 16 and 346, 78 Congress, as amended, caused a dearth of enrolled students and the institution collapsed, thereby causing the subsequent spoliation of the entire corpus of Petitioner's institution; that said institution operated the last three months of its existance with a student body of one non-veteran, and complied with all the terms and conditions precedent to said franchise and contract throughout the entire period of said contract; that Petitioner was entitled to compensation in the amount of thirty five thousand four hundred forty dollars, plus costs and attorney fees (R. 57-59).

Petitioner plead in his complaint that the herein action arose under the Constitution of the United States, Section 10, Article I, the Fifth and Section 1 of the Fourteenth Amendments thereof, as against Public Law 266, 81st Congress and the subsequent acts of concerned Defendants pursuant thereto. That the matter in controversy exceeded, exclusive of interest and costs, the sum of three thousand dollars (R. 56).

The District Court, upon hearing Defendants' motion to dismiss, ruled and held that it was without jurisdiction to entertain the suit, and by dicta, that the complaint failed to state a claim against the Defendants upon which relief could be granted, and that the Administrator of Veterans Affairs residing in Washington, D.C., was not subject to suit in the District of

Nebraska. The Appellate Court held that Plaintiff's amended and supplemental complaint was properly dismissed by the District Court.

REASONS.

1. The Courts below in handling this controversy, involving a vital point of Federal Constitutional Law, have decided an important question which has not been, but should be, settled by this Court, not only to correct the injustice wrought in this controversy but to prevent the recurrence of like injustices in similar controversies arising in the future.

2. The decision of the Courts below sanction such a departure from the accepted and usual course of judicial proceedings and considerations as to require the exercise of the supervisory function of this Court's power.

ARGUMENT.

Question one relates to the contract by and between this petitioner and the agents of the Department of Public Instruction, State of Nebraska, and the coordinated efforts of the agents of the Veterans Administration, and the members of the State Barber Board of Examiners, State Department of Health (R. 14,15), to acquire an Institution for the training of eligible veterans in the art and science of barbering.

Petitioner accepted the proffered proposition of the Agents of the various Governments, and in due course and after considerable expenditures, Petitioner received notice of approval which constituted a valid franchise

to train eligible veterans. One of the conditions precedent to the granting of the franchise was the waiving of the one year period of operation before an institution could become eligible for the training of veterans, which had been in force prior to the granting of said franchise, and by virtue of their plenary power had the authority to waive the one year provision—thus Petitioner's institution had been granted a franchise with the status of having been in operation for a period of one year. (State Regulations, lines 78-84). (App. B)

Question two is a continuation of question one and relative to Petitioner's contract with the Veterans Administration (R. 6-14). The Veterans Administration enters into a contract with Petitioner—thus recognizing his institution as having been in operation for a period of one year, by reason of the status of Plaintiff's Institution and by reason of the contract itself. Congress had prior to the formal approval and acceptance of the contract, which was a continuation of a prior contract, enacted into law (August 24, 1949) an Act known as the Independent Offices Appropriation Act, 1950, Public 266, 81st Congress, 63 Stat. 631, which contained a provision, page 653 of 63 Stat., that no part of the appropriation made for education and training under Title II of the Servicemen's Act of 1944 (Public Law 346, 78th Congress), 58 Stat. 287, as amended (see Section 701 [f] of Title 38 U.S.C.A.), should be expended after the effective date of the Appropriation Act, August 24, 1949, "for any veteran for a course in an institution which has been in operation for a period of less than one year immediately prior to the date of this Act".

Petitioner's contract was formally approved and accepted twelve days subsequent to the effective date of Public Law 266 by the home office of the Administrator of Veterans Affairs. Had Petitioner's Institution been considered as not being eligible at that time, surely the contract would not have been forthcoming as it did, twelve days after the effective date of Public Law 266. The administrator had made a decision, he had entered into a binding contract.

Question three concerns the immunity of the foregoing protected contracts against seizure without due process of law or the just payment of compensation therefor, the Fifth and Section 1 of the Fourteenth Amendments of the Federal Constitution prohibits this. Concerning the franchise, the Superintendent of Public Instruction had granted Petitioner a franchise on the 15th day of November, 1948, bestowing upon Petitioner's Institution the status of being in operation for a period of one year in order to qualify said institution for the purpose of training eligible veterans. The Veterans Administration sanctioned this approval along with the members of the State Barber Board by their coordinated efforts in enticing Petitioner to establish said institution for the express purpose of training eligible veterans. The Petitioner had accepted the proffered proposition, established the institution at considerable expense, qualified in every respect, except being in operation for a period of one year, which was mutually excepted and waived by the coordinators approving said institution, then, subsequently the Veterans Administration recognizing the status of said institution—the Lincoln Barber College, entered into contracts, the last one being accepted and approved twelve

days subsequent to the effective date of said Public Law 266, clearly establishing the fact that Petitioner's institution was eligible under said Public Law 266 to train eligible veterans.

The Appellate Court in affirming the judgment of the District Court stated:

> "We are satisfied that the plaintiff acquired no vested right to have his school remain an approved and accredited school for the training of veterans. His contract called for the training of eligible veterans, and it is apparent that on August 24, 1949, Congress withdrew the eligibility of veterans for training at plaintiff's school, excepting those already enrolled * * *. The termination of the contract in suit by the Veterans' Administration was not subject to review, and did not, in our opinion, constitute a taking of plaintiff's property without just compensation or without due process of law * * *. His termination of the contract, we think, did not give rise to any actionable right to enforcement of the contract or to damages for its termination. We think it makes no difference whether the contract became fully effective on August 8, 1949, before the enactment of Public Law 266, 81st Congress, or on September 6, 1949, after the enactment of that law * * *."

It is the contention of this Petitioner that Congress did not withdraw the eligibility of veterans for training at plaintiff's (Petitioner's) institution, the subordinate Officers of the Veterans Administration and the Superintendent of Public Instruction, by their coordinated and concerted acton in withdrawing the franchise and the subsequent termination of the contract, did so, pursuant to the promulgation of the Adminis-

trator of Veterans Affairs Instruction No. 1, dated September 8, 1949:

"Veterans Administration Instruction No. 1

Washington, 25, D. C. September 8, 1949

Public Law 266, 81st Congress

Application of the Provisions of Public Law 266, 81st Congress, Prohibiting Expenditures of Government Funds for Courses of Education to Training Until Certain Requirements are Met.

3. Policy.

a. Institutions in Operation Less Than One Year.

(2) For the purpose of Public Law 266, 81st Congress, an institution is defined as a school when it operates in one location. A subsidiary, branch or extension of an existing school in the same or different community will be considered as a separate institution. In determining whether a school has been in operation for a period of less than one year, the effective date of operation will be the date on which a full schedule of instruction was commenced by the school to a minimum of 25 students for which the school collected tuition. The school must have been in continuous operation under substantially the same ownership and management for a full twelve month period including reasonable vacation and holiday periods and must have provided to a minimum of 25 students during that full twelve months period the course or courses of substantially the same length and character as those offered following the twelve months period."

The Administrator under the above policy had enlarged upon Public Law 266 to the extent that even though an institution had been in operation or recognized as being in operation for a period of one year, the

institution could not be recognized as such, until such time as the institution maintained a full schedule of instruction to a minimum of 25 students for a period of one year.

At this point it is necessary to reiterate to get a digest of the foregoing before going into the law pertaining to the facts. The facts are as follows:

1. Petitioner was granted a franchise bestowing upon his institution the status of being in operation for a period of one year, the Veterans Administration sanctioned the granting of the franchise by their coordinated actions with the State Approving Agency.

2. The Veterans Administration again sanctioned the franchise by entering into contracts with Petitioner, and on the contract here concerned the Administrator either recognized the Petitioner's institution as having been in operation for a period of one year or waived the law under Public Law 266, 81st Congress, as the contract was formally approved and accepted twelve days subsequent to the effective date of that law.

3. Two days subsequent to the formal approval and acceptance of the contract with Petitioner, the Administrator of Veterans Affairs issued Instruction No. 1, pursuant to Public Law 266, defining institutions in operation less than one year.

4. Four days subsequent to the effective date of Instruction No. 1, Petitioner was notified by the Superintendent of Public Instruction that his franchise had been withdrawn.

5. One day subsequent to the withdrawal of Petitioner's franchise, the Veterans Administration notified him that his contract had been terminated, but could retain those enrolled before August 24, 1949, and that the action had been coordinated with the State Accrediting Agency.

The actions of the concerned Defendants in withdrawing Petitioner's franchise and contract were stated by both of the lower Courts to be pursuant to Public Law 266, 81st Congress. Petitioner has attempted to disprove this fact and contends that vested rights had accrued by reason of the granting of the franchise and the subsequent contracts. Defendants were estopped by their decisions to withdraw the franchise and contract according to the Doctrine of Waiver, what is said in 67 C. J. 294, Par. 2 is contended to be recognized by the law. It is to the effect that:

> "a person with full knowledge of the facts shall not be permitted to act in a manner inconsistent with his former position or conduct to the injury of another."

The Defendants here concerned did not act pursuant to Public Law 266, as said Law did not disqualify Petitioner's institution nor did it disqualify veterans from enrolling in said institution. However Instruction No. 1 did disqualify Petitioner's institution by the enlargement of Public Law 266 by the Administrator, which in effect created an impossibility to be performed by institutions who were of the status of being in operation for a period of one year, but who had not maintained a minimum of 25 students for a twelve months period. There can be no question, that where the Veterans Administration had a monopoly of the young

men of that period, that Petitioner's institution could ever comply with Instruction No. 1, relying upon non-veterans.

Question four concerns the constitutionalty of Title 38 U.S.C.A. Sections 11a-2 and 705. (App. B) The lower courts intimated that no distinction existed between the instant controversy and the following cases cited: *New York Technical Institute of Maryland, Inc.* v. *Limburg,* D.C.Md., 87 Fed. Supp. 308, 312; *Fletcher* v. *Veterans Administration,* D.C. E.D.Mich., 103 Fed. Supp. 654; and *Lynch* v. *United States,* 292 U.S. 571.

Petitioner respectfully submits that the only case in point with the instant controversy is *Lynch* v. *United States,* supra; Justice Brandeis distinguishes between contracts and gratuities. We quote in part as follows:

> "Penisons, compensation allowances and privileges are gratuities. They involve no agreement of parties; and the grant of them creates no vested right. The benefits confered by gratuities may be redistributed or withdrawn at any time in the discretion of Congress * * *."

Petitioner believes the above conclusion of law is sound in that it does not involve agreement of parties, however in the instant controversy there was an agreement of parties and rights did become vested, subject to Acts of Congress and the right of the Administrator to terminate for cause by giving sixty days notice. This he did not do. These were provisions that were part of the contract, but when the Administrators of the various Governments attempt to enlarge upon the law or act in pursuance of the enlargement that create impossibilities to be performed that are not a part of

the conditions precedent to said franchise and contract, but are direct violations of their contractual agreements, then they are operating outside of their express authority and are subject to the jurisdiction of Constitutional correction, by proper courts.

Justice Brandeis goes on to say that:

> "The Fifth Amendment commands that property be not taken without making just compensation. Valid contracts are property, whether the obligor be a private individual, a State, or the United States, rights against the United States arising out of a contract with it are protected by the Fifth Amendment. When the United States enters into contract relations, its rights and duties therein are governed generally by law applicable to contracts between private individuals."

The above supports Petitioner's contention that the authority vested in the Administrator, where contractual obligations are concerned, are no greater than those of an individual or corporation doing business by contractual agreements interstate. He is subject to the same laws and to the same jurisdiction of the courts as ordinary citizens. To avoid constitutional inhibitations he must stay within the confines of his own orbit Congress has provided as his exclusive province, and for the courts here concerned to hold to the contrary, must be based upon error as to the facts, surely statutes are not to be construed above the supreme law. It is the former that Petitioner is basing his contentions in argument; however, as an alternative Petitioner cites the following cases, to wit:

In *St. Joseph Stock Yard Co.* v. *United States*, 298 U.S. 38, 52, 'O L. Ed. 1033 (1936), pertaining to ad-

ministrative bodies of finality of fact-determination, the court had this to say:

> "But to say that their findings of fact may be made conclusive where constitutional rights of liberty and property are involved, * * * is to place those rights at the mercy of administrative officials and seriously to impair the security inherent in our judicial safeguards."

In *Baltimore & Ohio R. Co.* v. *United States,* 298 U.S. 349, 367-369, 80 L. Ed. 1209 (1936), where the court said that where property is being taken for public use and the owner invokes the just compensation clause, "he is entitled to a judicial determination of the amount. The due process clause assures a full hearing before the court or other tribunal empowered to perform the judicial function involved. That includes the right to introduce evidence and have judicial findings based upon it."

And in *Crowell* v. *Benson,* 285 U.S. 22, 56-57 (1932), Chief Justice Hughes elaborated in fusing the due process clause of the Fifth Amendment with Article III:

> "* * *whether the Congress may substitute for constitutional courts, in which the judicial power of the United States is vested, an administrative agency * * * for the final determination of the existence of the facts upon which the enforcement of the constitutional rights of the citizen depend." To do so, contended the Chief Justice, "would be to sap the judicial power as it exists under the Federal Constitution and to establish a government of a bureaucratic character alien to our system, wherever constitutional rights depend, as not infrequently they do depend, upon the facts, and finality as as to the facts becomes in effect finality in law."

A subsidiary question relating to the main questions herein, supra, is whether the Administrator, having his subordinate within the jurisdiction of the District Court acting pursuant to his promulgations, and who it is alleged has violated the vested property rights of Petitioner, be subject also to the same jurisdiction.

It is the contention of Petitioner that the Administrator being joined as a co-defendant with his subordinate, who, being within the jurisdiction doing business pursuant to the promulgations of the Administrator, should be treated the same as corporations under Title 28 U.S.C.A. 1391 (c). There is no foundation to treat him otherwise.

We believe what is said in *Brougham* v. *Blanton Mfg. Co.*, 243 Fed. 503, will in the least give some light on the question here concerned:

> "It is first contended by the appellant that no injunction could rightly have been granted against the appellants, because such an injunction could not have been properly granted against the Secretary of Agriculture. In St. Louis Independent Packing Co. v. Hon. David F. Houston, 242 Fed. 337, we recently had occasion to fully examine this question, and following that case we hold that this injunction could properly have been issued against the Secretary of Agriculture, had he been served or appeared, and he not being within the jurisdiction of the court, but having his subordinates there, who, it was alleged, were violating the law or about to violate it, upon a proper showing an injunction could issue against them."

CONCLUSION.

In summary Petitioner respectfully submits that a conflict exists between the actual facts of the instant controversy and the holding of the Appellate Court, and or between the United States Codes involved herein and the constitutional prohibitations of the Federal Constitution of the United States. That the petition for writ of certiorari ought to and should be granted.

Respectfully submitted,

GEORGE H. BRASIER,
Pro se,
HERBERT W. BAIRD,
138 N. 12th Street,
Lincoln 8, Nebraska.
Counsel for Petitioner.

APPENDIX A

Opinion

United States Court of Appeals

For the Eighth Circuit

No. 15,283.

George H. Brasier, APPELLANT,

V.

United States of America; H. V. Higley, Administrator of Veterans Affairs, Veterans Administration, Washington, D.C.; Ted Martens, Chief of Vocational Rehabilitation and Education Division, Veterans Administration, Lincoln, Nebraska; Freeman B. Decker, Superintendent of Public Instruction, Lincoln, Nebraska; Wayne O. Reed, former Superintendent of Public Instruction, Lincoln, Nebraska; and Otto G. Ruff, former Supervisor of Veterans Education, Lincoln, Nebraska, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA.

[June 21, 1955.]

Herbert W. Baird for Appellant.

William C. Spire, Assistant United States Attorney (Donald R. Ross, United States Attorney, was with him on the brief), for Appellees, United States of America, H. V. Higley, Administrator of Veterans Affairs, Veterans Administration, Washington, D.C., and Ted Martens, Chief of Vocational Rehabilitation and Education Division, Veterans Administration, Lincoln, Nebraska.

Robert V. Hoagland, Assistant Attorney General of the State of Nebraska (Clarence S. Beck, Attorney

General of the State of Nebraska, was with him on the brief), for Appellees, Freeman B. Decker, Superintendent of Public Instruction, Lincoln, Nebraska, Wayne O. Reed, former Superintendent of Public Instruction, Lincoln, Nebraska, and Otto G. Ruff, former Supervisor of Veterans Education, Lincoln, Nebraska.

Before SANBORN, WOODROUGH and VOGEL, Circuit Judges.

SANBORN, Circuit Judge.

This is an appeal from a judgment dismissing the amended and supplemental complaint of the plaintiff (appellant) in an action brought by him, as the owner of the Lincoln Barber College, against the defendants (appellees) to recover damages resulting from the alleged repudiation of his contract with the Veterans' Administration for the training of eligible veterans in barbering. The contract was entered into under Public Laws 16 and 346, 78th Congress, as amended.

The District Court, in ruling upon motions of the defendants to dismiss, held that it was without jurisdiction, that the complaint failed to state a claim against the defendants upon which relief could be granted, and that the Administrator of Veterans' Affairs residing in Washington, D.C., was not subject to suit in the District of Nebraska.

The facts deducible from the complaint as amended and supplemented may be summarized as follows: The plaintiff was the owner and operator of the Lincoln Barber College in Lincoln, Nebraska, which, pursuant to 38 C.F.R. § 21.418(a) and (b), received State approval for the training of veterans on November 15,

1948. The Veterans' Administration on August 8, 1949, contracted with the Lincoln Barber College for the training of eligible veterans, at Government expense, for the period of one year from July 1, 1949. The plaintiff asserts that the contract was not formally approved until September 6, 1949. By its terms, the contract was terminable by the Veterans' Administration at any time upon sixty days notice, *but was not so terminated.* The contract contained a provision "that any obligation assumed by the Veterans Administration under this contract is limited to the appropriated funds made available therefor." State approval of the plaintiff's school for the training of veterans was withdrawn on September 12, 1949, and the Veterans' Administration on September 13, 1949, terminated the approved status of the plaintiff's school for the training of veterans not already enrolled as of August 24, 1949. These administrative actions were taken pursuant to the Independent Offices Appropriation Act, 1950, Public Law 266, 81st Congress, 63 Stat. 631, which contained a provision, page 653 of 63 Stat., that no part of the appropriation made for education and training under Title II of the Servicemen's Readjustment Act of 1944 (Public Law 346, 78th Congress), 58 Stat. 287, as amended (see §701(f) of Title 38 U.S. C.A.), should be expended after the effective date of the Appropriation Act, August 24, 1949, "for any veteran for a course in an institution which has been in operation for a period of less than one year immediately prior to the date of enrollment in such course unless such enrollment was prior to the date of this Act." The official action taken by the defendants pursuant to the Appropriation Act, Public 266, made it impossible for the plaintiff to operate his school, which evi-

dently had, on August 24, 1949, a dearth of enrolled veterans, and the school "collapsed".

It is the theory of the plaintiff that his contract with the Veterans' Administration was property, and that the termination and frustration of that contract by the acts of the defendants constituted the taking of such property without just compensation and without due process of law, in violation of the Fifth Amendment to the Constitution of the United States. He contends, therefore, that he had a claim upon which relief could be granted, and that the District Court, under Section 1331 of Title 28 U.S.C.A., had jurisdiction of his action as one arising under the Constitution of the United States for damages alleged to be in excess of $3,000.

It is clear that whatever right or privilege the plaintiff had under his contract with the Veterans' Administration to educate and train veterans not already enrolled in his school was *terminated* by a *decision of* the *Administrator* of Veterans' Affairs for the reason that Congress had refused to authorize the payment of tuition for the training of any veteran not already enrolled at the school on August 24 1949. It is also clear that, by the terms of the contract, the obligation of the Veterans' Administration to pay the plaintiff tuition for veterans not enrolled before August 24, 1949, ceased as of that date.

We are satisfied that the plaintiff acquired no vested right to have his school remain an approved and accredited school for the training of veterans. His contract called for the training of eligible veterans, and it is apparent that on August 24, 1949, Congress withdrew the eligibility of veterans for training at the plain-

tiff's school, excepting those already enrolled. The plaintiff could have no greater rights to be paid tuition for training veterans than Congress authorized. The education and training provided by Congress for veterans, at Government expense, were obviously for their benefit and not for the benefit of the schools which might be selected by the Veterans' Administration to educate and train them. *New York Technical Institute of Maryland, Inc.* v. *Limburg*, D.C.Md., 87 F. Supp. 308, 312. We are in complete accord with the view expressed by Judge Chestnut in that case, and by the District Court in the instant case, "that the provision for educational and vocational training to veterans is in the nature of a gratuity, as are pensions, that may be granted or withheld in the wisdom of Congress. * * * Such gratuities are, of course, quite different from veterans' contractual rights under war risk insurance policies. *Lynch* v. *United States*, 292 U.S. 571, 577."

(The decision to terminate the plaintiff's contractual privilege to train veterans not enrolled prior to August 24, 1949, was an *administrative decision* of the Administrator of Veterans' Affairs.) As such it was final and conclusive and not subject to review. The District Court was without jurisdiction to overrule, override or disregard the decision. Section 11a-2 of Title 38 U.S.C.A., so far as here pertinent, provides that "the decisions of the Administrator of Veterans' Affairs on any question of law or fact concerning a claim for benefits or payments under any Act administered by the Veterans' Administration shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decisions."

Appendix

Section 705 of Title 38 U.S.C.A. provides that "All decisions rendered by the Administrator of Veterans' Affairs under the provisions of Sections 701, 702, 703, 704, 705, 706, 707-710, 712-715, 717, 718, 720, and 721 of this title [relating to vocational rehabilitation and to other benefits for veterans] or the regulations issued pursuant thereto, shall be final and conclusive on all questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by mandamus or otherwise any such decision."

These statutory provisions clearly deprive a District Court of the United States of jurisdiction over a case based upon the claim that a decision of the Administrator of Veterans' Affairs improperly terminated or rendered ineffective a contract for the training of veterans.

There is no controlling distinction between this case and *Fletcher* v. *Veterans Administration*, D.C. E.D. Mich., 103 F. Supp. 654, in which Judge Thornton dismissed, for lack of jurisdiction, a similar claim, because of the statutory provisions above quoted.

We conclude that Congress has vested in the Veterans' Administration the *exclusive right to determine* the veterans who are eligible to the benefits of education and vocational rehabilitation provided by Congress; to designate the institutions and schools in which they may be trained; and to withdraw veterans from any institution which can be, or is, no longer approved for their training.

The termination of the contract in suit by the Veterans' Administration was not subject to review, and

did not, in our opinion, constitute a taking of the plaintiff's property without just compensation or without due process of law. The contract was subject to the exercise of the powers conferred by Congress upon the Administrator of Veterans' Affairs relative to the education and training of veterans. His termination of the contract, we think, did not give rise to any actionable right to enforcement of the contract or to damages for its termination. We think it makes no difference whether the contract became fully effective on August 8, 1949, before the enactment of Public Law 266, 81st Congress, or on September 6, 1949, after the enactment of that law. It is inconceivable to us that officials of a State agency and of the Veterans' Administration having to do with the education and training of veterans under Congressional authority and at Government expense, can become liable for damages, either personally or officially, for acts performed pursuant to law in the line of their duty under circumstances such as those upon which the plaintiff's claim is based.

The Administrator of Veterans' Affairs, who was domiciled in the District of Columbia, was not subject to suit in the District of Nebraska. Section 1391(b) of Title 28 U.S.C.A., *Blackmar* v. *Guerre*, 342 U.S. 512, 516.

It is our conclusion that the plaintiff's amended and supplemental complaint was properly dismissed on the grounds and for the reasons stated by the District Court.

The judgment appealed from is affirmed.

A true copy.

Attest:

Clerk, U.S. Court of Appeals, Eighth Circuit.

Judgment

United States Court of Appeals
for the
Eighth Circuit

No. 15283 September Term, 1954.

Tuesday, June 21, 1955.

George H. Brasier, Appellant,

V.

United States of America; H. V. Higley, Administrator of Veterans Affairs, Veterans Administration, Washington, D.C.; Ted Martens, Chief of Vocational Rehabilitation and Education Division, Veterans Administration, Lincoln, Nebraska; Freeman B. Decker, Superintendent of Public Instruction, Lincoln, Nebraska; Wayne O. Reed, former Superintendent of Public Instruction, Lincoln, Nebraska; and Otto G. Ruff, former Supervisor of Veterans Education, Lincoln, Nebraska.

This cause came on to be heard on the record from the United States District Court for the District of Nebraska, and was argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

June 21st, 1955.

APPENDIX B

Statutes

Title 38 U.S.C.A., Section 11(a)(2):

"Notwithstanding any other provisions of law, except as provided in Sections 445 and 817 of this title[2], the decisions of the Administrator of Veterans Affairs on any question of law or fact concerning a claim for benefits or payments under any Act administered by the Veterans Administration shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decisions."

Title 38 U.S.C.A., Section 705:

"All decisions rendered by the Administrator of Veterans Affairs under the provisions of Sections 701, 702, 703, 704, 705, 706, 707-710, 712-715, 717, 718, 720 and 721 of this title or the regulations issued pursuant thereto, shall be final and conclusive upon all questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by mandamus or otherwise any such decision."

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[2] The exception noted can not avail the plaintiff. Section 445 has to do with the procedure in relation to disputed claims and Section 817 to suits arising over disputes concerning National Service Life Insurance in which judicial review is expressly allowed and the manner of seeking it provided.

State Rules

Department Rules for Approval of Educational Institutions for the Education and Training of Eligible Veterans, May 1, 1949, Page 2, Lines 78-84.

Since it is common practice that accrediting agencies will not accredit new schools at their opening, and since the employability of graduates cannot be ascertained at the time of a school's opening, no school is approved until it is operating smoothly and has proven its ability to do a creditable job, or has been licensed by another agency of state. (A new school is required to be in successful operation for a period of one year or longer before it is eligible for approval, unless it has been licensed earlier by another agency of state.)

Regulation

Instruction No. 1, pursuant to the Independent Appropriation Act, 1950, Public Law 266, 81st Congress, 63 Stat. 631, 653:

"3. Policy.

a. Institutions in Operation Less Than One Year.

(2) For the purpose of Public Law 266, 81st Congress, an institution is defined as a school when it operates in one location. A subsidiary, branch or extension of an existing school in the same or different community will be considered as a separate institution. In determining whether a school has been in operation for a period of less than one year, the effective date of operation will be the date on which a full schedule of instruction was

commenced by the school to a minimum of 25 students for which the school collected tuition. The school must have been in continuous operation under substantially the same ownership and management for a full twelve month period including reasonable vacation and holiday periods and must have provided to a minimum of 25 students during that full twelve months period the course or courses of substantially the same length and character as those offered following the twelve months period."

Constitutional Provisions

Section 10 Article I:

"No State shall * * * pass any Bill of Attainer, ex post facto Law, or Law impairing the Obligation of Contracts * * *."

Amendment V:

"* * * nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Section 1, Fourteenth Amendment:

"* * * No State shall make or enforce any law which shall abridge the privileges or immunties of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."